REVIEWS.

THE LAW OF CONTRACTS. By J. I. Clark Hare, LL.D. Boston: Little, Brown & Co. One volume. 8 vo. Law Sheep. 714 pages.

This book will not satisfy the wants of the case hunter, but to those interested in the study of law as a science it cannot be too highly recommended. Nowhere do we remember to have seen the development of the law of assumpsit so satisfactorily explained as here. That it was originally regarded as an action of tort is well known, but that for acts of omission the promisor was originally held liable as for a deceit practised on the party furnishing the consideration has not been generally known, and for a very clear demonstration of the latter theory we are indebted to Mr. Hare.

Quære, however, if, viewing the law of assumpsit as one of contract, the author is not influenced too much by the notion of injury or detriment suffered in fact by the party performing the consideration. For example, in discussing the law of gratuitous bailment, he states, and we think correctly, that the liability of the gratuitous bailee is not a liability for breach of contract, but he gives as reasons: 1. That the bailment is of no benefit to the bailee. 2. That the bailment is not a detriment, but a benefit, to the bailor. But is he not here using the word "detriment" in its popular, rather than in its legal, sense? Regarding detriment as the surrender of a legal right, the difficulty establishing a contract on the part of the gratuitous bailee is to find as a fact that he requested the bailor to exchange the possession of the property for his promise.

We are glad that the author takes occasion to distinctly repudiate the notion that a contract under seal implies a consideration, and states the law as it is, that none is needed. We regret that he has not dealt with the law of negotiable paper in the same way, for the notion that a bill or note delivered as a gift to the payee cannot be enforced by him is modern (see 2 Bl. Com., 446), and at the present day a consideration, as that word is used with reference to a simple promise, is not required in order that the payee of negotiable paper may recover thereon.

Those who have struggled with the phrases "executed and executory considerations" will rejoice that the author has classified contracts as unilateral and bilateral; but we cannot agree with him when he says that, because our law requires a consideration for a promise, the terms are less applicable to the common than to the civil law, for in neither system is the promisee in a unilateral contract ever bound, and in any system of law in a bilateral contract each party is bound. In fact, here, as elsewhere, the author, in distinguishing between the common and the civil law, is inclined, we think, to lay too great stress on the fact that a consideration is required in the one and not in the other. For example, in support of the prevailing view, that a bilateral contract is complete on the mailing of the letter of acceptance, the suggestion is made that this view is correct, for the reason that the question is to be treated as one of performance, and is not to be tested by the rules applicable to promises. At the same time he recognizes that in a bilateral contract each party is bound by a promise, and that the contract is binding because the one promise is the consideration for the other (see page

336), and he admits (see page 360) that the acceptance cannot be effectual as a promise until it reaches the offerer.

As the phrase "implied promise" is used to designate, 1. A class of cases where there is in fact a contract, the promise being established by conduct rather than the language of promise. 2. A class of cases where there is no contract, but where, on principles of enrichment, *i. e.*, to prevent one from unjustly profiting at the expense of another, the law imposes an obligation, and gives the remedy of general assumpsit, — it is to be regretted that one so well acquainted with the distinction did not separate the cases in his treatment of them, and use the phrase *quasi ex contractu* as to the latter.

The want of space prevents our referring at length to the remaining chapters of the book. The author has, however, treated the topics included in those chapters, as he has those to which we have more especially referred, with great care and thoughtfulness, and it is to be hoped that he will increase the obligation which the profession is under to him for his present publication by writing a treatise on those topics of the law of contracts not embraced in the present volume.

W. A. K.

THE LAW OF TORTS: A Treatise on the Principles of Obligations arising from Civil Wrongs in the Common Law. By Frederick Pollock. London: Stevens & Sons; Boston: Charles C. Soule. Octavo, ix. and 515 pages.

Mr. Pollock is well known in this country as the editor of the Law Quarterly Review, and the author of a treatise on the Principles of Contract. One great merit of the book he has just given us is its brevity and clearness. The principles of the law of torts are here stated in a form easy to read and to understand, and for that reason this work will probably become a favorite with students. The book contains several novel features. Leading American cases are frequently cited in the notes and referred to in the text, and have evidently had weight in the statement of several important principles. The references to the *lex aquilia* are interesting, and justify the author's assertion that this title of the Digest deserves more attention at the hands of English lawyers than it has ever received.

The general scope and object of the work are thus stated in the preface: "The purpose of this book is to show that there really is a Law of Torts, not merely a number of rules of law about various kinds of torts — that this is a true living branch of the Common Law, not a collection of heterogeneous instances." In carrying out this purpose the author has divided his work into two parts, the first being a discussion and review of the general principles common to the whole subject, viz., the grounds of liability, exceptions from liability, and remedies. The second part is devoted to the several distinct kinds of actionable wrongs. In this branch of the subject there is less scope for theory and general discussion than in the first. It is tied down by the old common-law forms of action, and to be complete should include a large amount of historical matter, explaining the origin and use of those forms of action, as well as a statement of the principles now established and acted upon as law. If, for example, some author should show clearly the origin of the action of trover, and trace minutely the successive steps by which it practically swallowed up the